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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Nathan Sterling Mason,
Plaintiff,

v.

Charles L. Ryan, et al.,
Defendants.

No. CV 19-04987-PHX-DGC (MHB)

ORDER

Plaintiff Nathan Sterling Mason, who is currently confined in the Arizona State Prison Complex (ASPC)-Lewis in Buckeye, Arizona, brought this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 19.) Before the Court is Plaintiff's Motion for Preliminary Injunction. (Doc. 4.)¹

I. Background

On screening under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated the following claims: (1) an Eighth Amendment medical care claim against former Arizona Department of Corrections (ADC) Director Charles Ryan in his individual capacity in Count One; (2) an Eighth Amendment official capacity claim in Count One against current ADC Director David Shinn; (3) an Eighth Amendment medical care claim in Count Four against Nurse Practitioner Ende in his individual capacity; (4) First Amendment retaliation claims against Special Security Unit Officer Taylor, Lieutenant Randall Lowe, Corrections

¹ The Court will address the remaining pending motions (Docs. 34, 35, 38, 54) in a separate Order.

1 Officer (CO) III Jaymond Williams, Deputy Warden Ronald Abbl, CO II Evans, CO II
2 Kila, and CO II Vargas; and (5) a First Amendment retaliation claim and an Eighth
3 Amendment excessive force claim against CO II Hernandez in Count Three. (Doc. 28.)
4 The Court ordered these Defendants to answer the respective claims against them and
5 dismissed the remaining claims and Defendants. (*Id.*)

6 **II. Legal Standard**

7 “A preliminary injunction is ‘an extraordinary and drastic remedy, one that should
8 not be granted unless the movant, by a clear showing, carries the burden of persuasion.’”
9 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520
10 U.S. 968, 972 (1997) (per curiam)); *see also Winter v. Natural Res. Def. Council, Inc.*, 555
11 U.S. 7, 24 (2008) (citation omitted) (“[a] preliminary injunction is an extraordinary remedy
12 never awarded as of right”). A plaintiff seeking a preliminary injunction must show that
13 (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm without
14 an injunction, (3) the balance of equities tips in his favor, and (4) an injunction is in the
15 public interest. *Winter*, 555 U.S. at 20. “But if a plaintiff can only show that there are
16 ‘serious questions going to the merits’—a lesser showing than likelihood of success on the
17 merits—then a preliminary injunction may still issue if the ‘balance of hardships tips
18 sharply in the plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Shell*
19 *Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance*
20 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). Under this serious
21 questions variant of the *Winter* test, “[t]he elements . . . must be balanced, so that a stronger
22 showing of one element may offset a weaker showing of another.” *Lopez*, 680 F.3d at
23 1072.

24 Regardless of which standard applies, the movant “has the burden of proof on each
25 element of the test.” *See Env’tl. Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016,
26 1027 (E.D. Cal. 2000). Further, there is a heightened burden where a plaintiff seeks a
27 mandatory preliminary injunction, which should not be granted “unless the facts and law
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1 clearly favor the plaintiff.” *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1441 (9th
2 Cir. 1986) (citation omitted).

3 The Prison Litigation Reform Act imposes additional requirements on prisoner
4 litigants who seek preliminary injunctive relief against prison officials and requires that
5 any injunctive relief be narrowly drawn and the least intrusive means necessary to correct
6 the harm. 18 U.S.C. § 3626(a)(2); *see Gilmore v. People of the State of Cal.*, 220 F.3d 987,
7 999 (9th Cir. 2000).

8 **III. Relevant Facts**

9 **A. Plaintiff’s Allegations**

10 In his Motion for Preliminary Injunction, Plaintiff states that “he has suffered
11 chronic pain since 12/2015” and that he “is only provided ibuprofen 600 mg, 3x daily, and
12 has not even rec[ei]ved that for over a month[.]” (Doc. 4 at 1.) Plaintiff states that he had
13 an MRI on December 16, 2016 and saw a pain management specialist on March 28, 2017,
14 and he was “diagnosed with severe bulging/herniated cervical disc’s [sic], degenerative
15 disc disease, severe spinal stenosis, radiculopathy, and other serious spine conditions.” (*Id.*
16 at 2.) Plaintiff asserts that on October 31, 2018, he had spine surgery, but he is still
17 currently experiencing excruciating, chronic pain in his upper back, left shoulder, and neck.
18 (*Id.*)

19 **B. Plaintiff’s Medical Records**

20 In opposition to Plaintiff’s Motion for Preliminary Injunction, Defendant Shinn
21 presented the following evidence of Plaintiff’s medical treatment. On December 2, 2019,
22 Plaintiff was seen by Nurse Practitioner (NP) Cassidy Morales for complaints of chronic
23 neck and back pain. (Doc. 66-1 at 46.) Plaintiff reported that he had cervical surgery in
24 2018 and “that since the surgery he has continued to have pain” that “is increasing in
25 severity and radiating to his upper back and both of his arms.” (*Id.*) Plaintiff stated that
26 Keppra did not help his pain and, he requested to be prescribed Tramadol instead. (*Id.*)
27 Plaintiff was prescribed Tramadol. (*Id.*) NP Morales noted that most recent x-rays
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1 indicated that Plaintiff's "[a]lignment remains satisfactory with hardware in place since
2 prior exam. Odontoid remains intact." (*Id.*)

3 On January 14, 2020, Plaintiff was seen onsite by NP Oyuki Coronado to follow-up
4 on Plaintiff's December 23, 2019 blood test that showed non-detectable levels of
5 Tramadol. (*Id.* at 12, 43.) Plaintiff reported that he had been taking his Tramadol and was
6 "unsure why the non[-]detectable level came up." (*Id.*) Plaintiff also reported that he was
7 "feeling well today" and the Tramadol had been helping his pain. (*Id.*) Plaintiff stated that
8 he would like to keep taking Tramadol if possible. (*Id.*) NP Coronado educated Plaintiff
9 on medication compliance and made a note to speak to the medical director in order to
10 clarify the results of Plaintiff's blood test. (*Id.* at 14.) Plaintiff's medications were not
11 changed at this time. (*Id.*)

12 A January 24, 2020 medical record indicates that Plaintiff was returned to the prison
13 after an offsite appointment at AZ-Tech Radiology where he had a cervical and thoracic
14 spine MRI taken. (Doc. 66-1 at 2.) The medical record also indicates that Plaintiff has a
15 prescription for Tramadol that is valid until February 29, 2020. (*Id.*)

16 On February 7, 2020, NP Coronado reviewed the results of Plaintiff's thoracic spine
17 MRI and noted that Plaintiff was assessed with multi-level thoracic spondylosis, multi-
18 level Schmorl nodes² involving the mid and lower thoracic vertebrae, and several bulging
19 discs. (Doc. 66-2 at 33.) NP Coronado also reviewed the results of Plaintiff's cervical
20 spine MRI and noted that Plaintiff was assessed with "loss of the normal lordotic curvature
21 of the cervical spine," cervical fusion of C5 and C6, disc herniation at C3-C4, severe
22 asymmetric left-sided spinal canal stenosis bulging disc at C6-C7. (*Id.* at 34.) NP
23 Coronado noted that she would submit the results of both MRIs "to RubiconMD for further
24 recommendations." (*Id.* at 33–34.)³

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26 ² "Schmorl nodes, also referred [to] as intravertebral disc herniations, refer to
27 protrusions of the cartilage of the intervertebral disc through the vertebral body endplate
28 and into the adjacent vertebra." See "Schmorl nodes," *Radiopaedia*,
<https://radiopaedia.org/articles/schmorl-nodes-1?lang=us> (last visited Feb. 27, 2020).

³ RubiconMD is a web-based e-consult service that allows primary care providers
to consult on cases with specialists through an online platform. See www.rubiconmd.com

1 Plaintiff's Medication Administration Record indicates that between December 4,
2 2019 and February 9, 2020, Plaintiff received daily doses of Tramadol. (*Id.* at 51–52.)

3 **IV. Discussion**

4 In his Motion for Preliminary Injunction, Plaintiff asks the Court to issue an
5 injunction ordering Defendant Shinn “to immediately institute a policy and/or issue a
6 demand/directive to Centurion, to treat Plaintiff[']s chronic pain as a serious medical
7 need[.]” (Doc. 4 at 1.)

8 As to the first *Winter* factor, the Court finds that Plaintiff fails to show a likelihood
9 of success on the merits. To establish a likelihood of success on the merits of an Eighth
10 Amendment medical care claim, a prisoner must demonstrate “deliberate indifference to
11 serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *Estelle*
12 *v. Gamble*, 429 U.S. 97, 104 (1976)). The prisoner must show: (1) that his condition
13 constitutes a “serious medical need”; and (2) that the defendant's current response to that
14 need is deliberately indifferent. *Jett*, 439 F.3d at 1096.

15 There is sufficient evidence to show that Plaintiff's chronic pain constitutes a
16 serious medical need, including Plaintiff being sent to offsite consultations, undergoing
17 diagnostic testing including an MRI and x-ray, and being prescribed pain medications.

18 The subjective prong of the deliberate indifference analysis is satisfied by showing
19 (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and
20 (b) harm caused by the indifference. *Jett*, 439 F.3d at 1096. The available record shows
21 that Plaintiff was prescribed and has been receiving Tramadol to treat his pain. Plaintiff
22 reported that Tramadol is helping his pain. Further, Plaintiff recently was sent offsite for
23 thoracic and cervical MRIs, and the results recently were reviewed by NP Coronado and
24 are being forwarded for further recommendations. These facts do not suggest that the
25 current treatment of Plaintiff's chronic pain amounts to deliberate indifference. *See*
26 *Farmer v. Brennan*, 511 U.S. 825, 845 (1994) (where a plaintiff seeks injunctive relief, the
27 deliberate indifference determination is based on the defendant's current conduct).

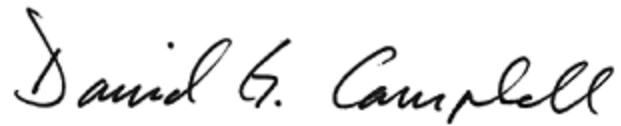
28 _____
(last visited Feb. 27, 2020).

1 Likewise, Plaintiff has failed to establish that he will suffer irreparable harm absent
2 injunctive relief because the record shows that he currently is receiving treatment for his
3 chronic pain.

4 Because Plaintiff fails to produce evidence to show a likelihood of success on the
5 merits or that he faces a likelihood of irreparable harm, the Court will deny the Motion for
6 Preliminary Injunction and will not address any of the other *Winter* factors. *See Ctr. for*
7 *Food Safety v. Vilsack*, 636 F.3d 1166, 1174 (9th Cir. 2011) (because the plaintiffs failed
8 to show they are likely to suffer irreparable harm in the absence of preliminary relief, the
9 court need not address the remaining elements of the preliminary injunction standard).

10 **IT IS ORDERED** that the reference to the Magistrate Judge is **withdrawn** as to
11 Plaintiff's Motion for Preliminary Injunction (Doc. 4), and the Motion is **denied**.

12 Dated this 4th day of March, 2020.

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David G. Campbell
17 Senior United States District Judge
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